

Law Office of Nora J. Chorover

nchorover@choroverlaw.com

RECEIVED

NOV 20 2015

OFFICE OF THE REGIONAL ADMINISTRATOR

November 17, 2015

**BY CERTIFIED MAIL**

Curt Spalding, Regional Administrator  
EPA New England, Region 1,  
5 Post Office Square - Suite 100  
Boston, MA 02109-3912  
Certified # 7013 2250 0000 2096 4375

Gina McCarthy, Administrator  
US EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Certified # 7013 2250 0000 2096 4368

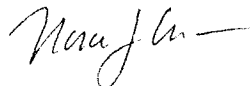
Citizen Suit Coordinator  
Environment and Natural Resources  
Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415  
Certified # 7013 2250 0000 2096 4344

Re: Notice of Execution of Consent Decree in  
Clean Water Action v. Polarized New England Company LLC;  
Case No. 1:15-CV-10295-RWZ

Dear Sirs/Madams:

Enclosed pursuant to 40 CFR 135.4 please find an executed copy of the parties' proposed Consent Decree resolving the above caption brought under the citizen suit provision of the Clean Water Act. We have informed the Court of the parties' settlement and of the statutory requirement of 45 days' notice to the United States prior to entry of any Consent Decree. Please feel free to call me if you have any questions about the enclosed. Thank you.

Sincerely,



Nora J. Chorover

Enclosure

cc: William J. Squires, III, Esq. (by email)



CLEAN WATER ACTION,  
Plaintiff,

v.

PROLERIZED NEW ENGLAND  
COMPANY LLC,

Defendant.

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Case No. 1:15-CV-10295-RWZ

**CONSENT DECREE**

WHEREAS, storm water discharges associated with certain industrial activities are regulated pursuant to the Federal Clean Water Act's (the "Act's") National Pollutant Discharge Elimination System ("NPDES") and the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity issued by the United States Environmental Protection Agency and effective on June 4, 2015 (the "Storm Water Permit"). See U.S.C. §§ 1311(a), 1342(a), 1342(p); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 80 Fed. Reg. 34403 (June 4, 2015).

WHEREAS, on November 11, 2014, Clean Water Action provided notice of alleged violations of the Act by Prolerized, and of Clean Water Action's intention to file suit against Prolerized, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region I; the Massachusetts Department of Environmental Protection; and to Prolerized, pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, Prolerized anticipates that certain planned upgrades to its storm water treatment systems, together with implementation of the Best Management Practices and other measures set forth in Prolerized's Storm Water Pollution Prevention Plan, will ensure compliance with applicable state water quality standards and effluent standards required by the Storm Water Permit;

WHEREAS, the intent of Prolerized's planned upgrades to its storm water treatment systems, together with implementation of the Best Management Practices and other measures set forth in Prolerized's Storm Water Pollution Prevention Plan, is to control the facility's storm water discharges so that they are within applicable pollutant benchmark concentrations set forth in the Storm Water Permit;

WHEREAS, Prolerized states that it has re-graded the paved area near the southwest portion of the Facility as part of its efforts to prevent untreated storm water from flowing into the unpaved shorefront/dock area or off-site into the Mystic River;

WHEREAS, the parties have decided that is in their best interests to resolve the litigation by good faith settlement and compromise without the taking of any evidence or findings of fact or law; and

WHEREAS, this Consent Decree shall be submitted to the United States Department of Justice for the 45 day statutory review period, pursuant to 33 U.S.C. § 1365(c).

NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

**I. INJUNCTIVE RELIEF**

1. Prolerized agrees to operate the Facility in compliance with the applicable requirements of the Storm Water Permit and the applicable NPDES requirements of the Clean Water Act, including any applicable amendments to the Storm Water Permit or the NPDES requirements of the Act that may be made during the Term of this Consent Decree.

2. Prolerized shall implement the following measures:

a. Improved Pollutant Reduction Measures. Prolerized will direct and properly control storm water at its Facility to minimize pollutants in storm water discharges from the Facility. Specifically, Prolerized will take the following actions by the following dates:

- 1) Direct storm water at the facility, including storm water discharged into all catch basins, but excluding storm water that infiltrates into the ground, to an appropriate treatment system prior to its discharge to the Mystic River. Date for completion: May 31, 2016.
- 2) Plug outfall 002 with concrete to ensure no storm water discharges from that outfall. Date for completion: January 31, 2016.
- 3) Prevent unpermitted fugitive discharges to the Mystic River of metal particulates and materials during loading onto barges. Date for completion: February 28, 2016.

b. Improved Compliance Monitoring. Prolerized shall ensure representative sampling of storm water discharged from the facility as follows:

- 1) Monitor in accordance with applicable provisions of Section 6 of the Permit, and Appendix B, section B-10 of the permit.
- 2) Follow the procedures set forth in EPA's Industrial Storm Water Monitoring and Sampling Guide (March 2009), or any applicable updated EPA guidance on industrial storm water monitoring and sampling.

- 3) Perform quarterly monitoring during each annual quarter that this Consent Decree is in effect.
- 4) Prepare video recordings of the first of the three sampling events described in Section I(2)(b)(5) below for each of the first four quarters after June 30, 2016, and provide Clean Water Action with copies of such video recordings. The video recordings shall include an accurate record of the time and date on which they were recorded. Each video shall make clear and evident, through visual imagery,
  - a) the date and time on which it was recorded,
  - b) the location or locations at which it was recorded,
  - c) the persons present during the recording,
  - d) the location of the pipe or conduit being sampled from,
  - e) the manner in which each sample is taken, and
  - f) the sample or samples taken.

If the video imagery is insufficient to verify items (a)-(f) above, then Clean Water Action shall have the right to be present during or require the recording of another representative sampling event in a subsequent calendar quarter of its choosing.

- 5) During the first quarter of benchmark sampling after completion of the actions described in Sections I(2)(a)(1) and (2) of this Consent Decree are completed and for three (3) consecutive quarters thereafter, ensure representative samples of discharges to the Mystic River from the company's storm water treatment system(s) by performing quarterly sampling from such system(s) as follows:
  - a) One sample taken within the first 30 minutes of the discharge from the treatment system(s);
  - b) One sample taken approximately two to four hours after the initial discharge of storm water from the treatment system; and
  - c) One sample taken approximately six to eight hours after the initial discharge of the storm water from the treatment system.
- 6) Overflow Storm Water Discharges. For purposes of this Consent Decree, the term "Overflow Storm Water Discharge" shall mean any storm water discharge from the Facility that occurs after 1.2 inches of rain has fallen over the preceding 6 hours. Prolerized shall perform Overflow Storm Water Discharge sampling at least twice per year during each year that this Consent Decree is in effect unless there are fewer than two such rain events in any one year. The Overflow Storm Water Discharge samples shall be:
  - a) taken within 30 minutes of the commencement or discovery of the Overflow Storm Water Discharge,

- b) tested for all benchmark parameters, and
- c) submitted to Clean Water Action in accordance with paragraph I(3)(b)(4) of this Consent Decree.

For purposes of this Consent Decree, samples of Overflow Storm Water Discharges are not subject to the Storm Water Permit's benchmark limits.

- 7) Nothing in this paragraph limits Prolerized's sampling obligations under the Storm Water Permit.

### 3. Clean Water Action Involvement

a. Prolerized shall permit representatives of Clean Water Action to perform up to two site visits to the Facility during normal daylight business hours during each year for the three years following the Effective Date, provided that Clean Water Action provide at least two (2) business days prior notice. During the site inspections, CWA representatives shall have access to and permission to copy any documentation required to be kept on site by the Storm Water Permit, and may collect storm water samples and take photos at the Facility; provided, however, that CWA representatives must be accompanied by representatives of Prolerized at all times while they are at the Facility. Any such samples shall be split samples with one of the split samples remaining in the possession of Prolerized. All samples, including split samples provided to Prolerized, must be analyzed within any applicable timeframes for the benchmark parameters required under the Storm Water Permit for the Facility and in accordance with appropriate laboratory protocols.

b. For the Term of this Decree, Prolerized shall provide Clean Water Action with the following documents, by emailing them to [compliance@cleanwater.org](mailto:compliance@cleanwater.org) and [nchorover@choroverlaw.com](mailto:nchorover@choroverlaw.com):

- 1) Copies of all documents Prolerized submits to EPA, the Commonwealth of Massachusetts and/or the City of Everett concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted as required by the Storm Water Permit. Such documents and reports shall be sent

to Clean Water Action within seven (7) business days of their submission to the governmental entity.

- 2) All maintenance records for its storm water pollution control systems. Maintenance records will be provided within seven (7) business days of Prolerized's receipt of a written request by Clean Water Action. Prolerized will provide Clean Water Action with timely written notice of any planned or completed changes to the company's storm water control measures, with dates of anticipated or completed changes. These reports should be provided on a quarterly basis commencing with the first full monitoring quarter following the Effective Date.
- 3) Current copies of the company's SWPPP within 48 hours of a request by Clean Water Action.
- 4) Laboratory reports and analytical results of storm water sampling performed by or for Prolerized, within 30 days of receiving the reports.
- 5) Video recordings of four quarterly monitoring events after June 30, , 2016 prepared in accordance with paragraph (2)(b)(4), above, at the same time that the corresponding laboratory reports and analytical results for the samples are provided (see (3)(b)(5), above). All Quarterly Visual Inspection Forms and Routine Facility Inspection Forms, including laboratory results for the samples, shall be submitted to Clean Water Action with the Annual Report.

## **II. PAYMENTS**

3. Within 15 days of the Effective Date, Prolerized shall make a payment of \$100,000 to the Mystic River Watershed Association ("MyRWA") for a project or projects designed to benefit water quality in the Mystic River Watershed. Of this \$100,000, MyRWA will grant \$50,000 to Chelsea Collaborative for community projects that benefit the Mystic River Watershed and the community. Payment shall be made by certified check, money order or wire transfer to EkOngKar Singh Khalsa, Executive Director, Mystic River Watershed Association, 20 Academy Street, Suite 306, Arlington, MA 02476-6401. Evidence of such payment shall be provided to Clean Water Action.
4. Within 15 days of the Effective Date, Prolerized shall make a payment of \$30,000 to the Conservation Law Foundation ("CLF") for CLF's Clean Water Program to support the



organization's efforts to protect and restore water quality in the greater Boston area. Payment shall be made by certified check, money order or wire transfer to Conservation Law Foundation, 62 Summer Street, Boston, MA 02110 Attn: Veronica Eady. Evidence of such payment shall be provided to Clean Water Action.

5. Within 15 days of the Effective Date, Prolerized shall reimburse Clean Water Action in the amount of \$52,000 to defray Clean Water Action's investigation fees and costs, expert fees and costs, and attorneys' fees incurred and to be incurred in connection with its work on this matter. Payments shall be made by certified check, money order or wire transfer to Law Office of Nora J. Chorover, Client Trust Account, 11 Green Street, Boston, Massachusetts 02130.

6. Within 15 days after the date this Court enters this Decree, Prolerized shall pay to Clean Water Action \$15,000 to be placed in the Client Trust Account held for its benefit by the Law Office of Nora J. Chorover, to be used to reimburse Clean Water Action for reasonable fees and costs incurred to monitor Prolerized's compliance with this Consent Decree. Payment shall be made by certified check or money order, made out to Law Office of Nora J. Chorover, Client Trust Account, and delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to Nora J. Chorover, Law Office of Nora J. Chorover, 11 Green Street, Boston, MA 02130. Nothing in this paragraph or in this Consent Decree shall restrict Clean Water Action's right to seek additional compensation for fees or costs that it incurs to address Prolerized's noncompliance with the terms of this Consent Decree.

### **III. MUTUAL RELEASE**

8. Upon entry of this Consent Decree by the Court, Clean Water Action, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases and covenants not to sue Prolerized and the

owners of the real property on which the Facility is located (and their respective members, managers, shareholders, directors, officers, employees, subsidiaries, affiliates, agents, attorneys, representatives, predecessors, successors, and assigns), and waives all claims, whether known or unknown, for damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, capital improvements, expenses and any other claim, relief or sum incurred or claimed or which could have been claimed in this Action, for (a) the alleged failure of Prolerized to comply with the Clean Water Act (including, without limitation, the NPDES program and the 2008 and 2015 Storm Water Permits) at the Facility or (b) storm water discharges from the Facility, up to the date on which this Consent Decree is executed by the parties. Clean Water Action does not release any claims to enforce any term of this Consent Decree during its Term.

9. Upon entry of this Consent Decree by the Court, Prolerized, on its own behalf and on behalf of its members, managers, shareholders, directors, officers, employees, subsidiaries, affiliates, agents, attorneys, representatives, successors and assigns, releases and covenants not to sue Clean Water Action (and its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees) from, and waives all claims, whether known or unknown, which arise from or pertain to this Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses and any other claim, relief or sum incurred or claimed or which could have been claimed for matters associated with or related to this Action. Prolerized does not release any claims to enforce any term of this Consent Decree during its Term.

#### **IV. DISPUTE RESOLUTION**

10. If a dispute under this Consent Decree arises, or either party believes that a breach of this Consent Decree has occurred, either party may request that the other party meet and confer within fourteen (14) calendar days of receiving written notification of such request, for the purpose of determining whether a violation has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred or should have occurred, either party shall be entitled to all rights and remedies under the law, including filing a motion with the District Court of Massachusetts. The parties shall be entitled to seek fees and costs incurred in any such motion. Any fee determination by the Court shall be governed by the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d) and case law interpreting Section 505(d).

#### **V. MISCELLANEOUS PROVISIONS**

11. Prolerized shall not be considered to be in default of any of its obligations when a failure to perform such obligations is due to a "Force Majeure Event." A "Force Majeure Event" is any circumstance beyond Prolerized's control, including, without limitation, any act of God, war, fire, earthquake, flood, or restraint by any court or governmental authority. A Force Majeure Event does not include normal inclement weather or inability to pay. Prolerized shall have the burden of establishing that it could not reasonably have been expected to avoid and has been unable to overcome by exercise of due diligence, the Force Majeure Event.

12. The Effective Date of this Consent Decree shall be the date it is approved and entered by the Court.

13. The Term of this Consent Decree shall be from the Effective Date until three (3) years after the Effective Date; provided, however, that the provisions of Article III shall survive indefinitely.
14. This Consent Decree shall be binding on the parties and shall be binding on and inure to the benefit of their successors and assigns.
15. The Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.
16. CWA does not, by consent to the Decree, warrant or aver in any manner that Prolerized's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Consent Decree shall be construed to limit in any way Prolerized's obligations under any federal, state, or local law or regulation governing any activity required by the Consent Decree.
17. Nothing set forth in this Consent Decree shall constitute or be construed as an admission by Prolerized as to any fact, issue of law or liability asserted by Clean Water Action.
18. By entering this Consent Decree, Prolerized does not waive any defenses or rights with respect to any allegation or claim asserted by any party, including Clean Water Action, of any kind or nature, including allegations that Prolerized breached the terms of this Consent Decree.
19. The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.
20. The undersigned are authorized to execute this Consent Decree on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.

21. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Consent Decree are contained herein.

22. Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Clean Water Action pursuant to this Consent Decree shall be sent electronically, hand delivered or sent by U.S. Mail, postage prepaid, and addressed as follows:

Nora J. Chorover  
Attorney for Clean Water Action  
Law Office of Nora J. Chorover  
11 Green Street  
Boston, MA 02130  
[nchorover@choroverlaw.com](mailto:nchorover@choroverlaw.com)

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Prolerized pursuant to this Consent Decree shall be sent electronically or by U.S. Mail, postage prepaid, and addressed as follows:

Scott B. Sloan  
Environmental Director  
Schnitzer Steel Industries, Inc.  
23711 63rd Avenue SE  
Woodinville, WA 98072  
[ssloan@schn.com](mailto:ssloan@schn.com)

With a copy to:

William J. Squires, III  
Morgan, Lewis & Bockius LLP  
1 Federal Street  
Boston, MA 02110  
[william.squires@morganlewis.com](mailto:william.squires@morganlewis.com)

Each party shall notify the other party of any change in its contact information within 14 days of any such change.

23. Signatures of the parties transmitted by facsimile or email are binding.

24. If the Court declines to approve this Consent Decree, or any part thereof, in the form presented, the parties will work together to modify the Consent Decree within 30 days to endeavor to make it acceptable to the Court, so long as that can be done consistent with each party's intent in entering into the Consent Decree.

25. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the parties to this consent Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree.

26. The parties agree to submit this Consent Decree to the Court for its approval, , and to stipulate that the case will be dismissed with prejudice on joint motion of the parties, filed at the cost of Prolerized, after the Term of the Consent Decree has expired.

Dated: 11/13/15

/s/

Clean Water Action

By:

Dated: 11/16/15

/s/

Prolerized New England Company LLC

By:

Approved:

\_\_\_\_\_  
United States District Judge